UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
	§	
VS.	§	CRIMINAL ACTION NO. 4:18-CR-507
	§	
MELVIN MARQUISE STEWART		

ORDER

Before the Court are Defendant's Motion to Suppress (the "Motion") (Doc. #18), the Government's Corrected Response (Doc. #21), and Defendant's Sealed Reply (Doc. #22). Having reviewed the parties' arguments in their briefing, testimony given at the February 14, 2019 hearing, and applicable legal authority, the Court grants in part and denies in part the Motion.

Defendant moves to suppress "the firearm seized on or about February 4, 2018, without a warrant and without probable cause," arguing that the Government detained Defendant without reasonable suspicion and searched him without probable cause. Doc. #18 at 1. Additionally, Defendant moves to suppress "any statements made [by Defendant] without Miranda warnings while in police custody on February 4, 2018," and "statements from [Defendant], after a Miranda waiver" to ATF Special Agent Schuster on July 11, 2018. Doc. #18 at 1; Doc. #22 at 4–6.[1]

[1] At the February 14, 2019 hearing, the Government did not oppose Defendant's Motion with respect to "any statements made [by Defendant] without Miranda warnings while in police custody on February 4, 2018." Doc. #18 at 1. Accordingly, as to those statements, the Court grants the Motion. However, the Court finds no evidence to suggest that federal and state authorities cooperated in their investigations to circumvent Defendant's Sixth Amendment rights. Doc. #22 at 4–6. Accordingly, as to the statements made by Defendant to Agent Schuster after a *Miranda* waiver on July 11, 2018, the Court denies the Motion.

Unless justified by probable cause, seizures of persons by the Government are generally deemed invalid under the Fourth Amendment. *United States v. Monsivais*, 848 F.3d 353, 357 (5th Cir. 2017) (citing *Terry v. Ohio*, 392 U.S. 1 (1968) and *United States v. Hill*, 752 F.3d 1029 (5th Cir. 2014)). However, "police officers may briefly detain a person for investigative purposes if they can point to specific and articulable facts that give rise to reasonable suspicion that a particular person has committed, is committing, or is about to commit a crime." *Monsivais*, 848 F.3d at 357; *see also United States v. Zavala*, 541 F.3d 562, 574 (5th Cir. 2008) ("reasonable suspicion need not rise to the level of probable cause" (internal citation omitted)). "To find that reasonable suspicion existed to justify a stop, a court must examine the totality of the circumstances in the situation at hand, in light of the individual officers' own training and experience, and should uphold the stop only if it finds that the detaining officer had a particularized and objective basis for suspecting legal wrongdoing." *Monsivais*, 848 F.3d at 357 (citing *United States v. Arvizu*, 534 U.S. 266 (2002)) (cleaned up). Furthermore, if the detention and investigation lead to the discovery of additional evidence that amounts to probable cause and warrants an arrest, the arresting officer may direct an inventory search of a vehicle being impounded. *United States v. McKinnon*, 681 F.3d 203, 209 (5th Cir. 2012) ("an inventory search of a seized vehicle is reasonable and not violative of the Fourth Amendment if it is conducted pursuant to standardized regulations and procedures that are consistent with (1) protecting the property of the vehicle's owner, (2) protecting the police against claims or disputes over lost or stolen property, and (3) protecting the police from danger" (internal citation omitted)). Ultimately, the Government must show that all searches and seizures were lawful by a preponderance of the evidence. *See United States v. Hurtado*, 905 F.2d 74, 76 (5th Cir. 1990).

Here, the oral testimony of Officers R. Reid and T. Hudson at the February 14, 2019 hearing establishes the following facts by a preponderance of the evidence. Before detaining Defendant and running his information to confirm his identity, the two officers had been informed by the clerk working at the convenience store located at 1302 Eastex Freeway, Houston, Texas—someone the officers had personally known prior to February 4, 2018—that an individual had been observed with a firearm at the store. The officers also learned from the clerk that the same person had left the store and entered a gray Nissan SUV parked in the store's parking lot. Upon arriving at the store, the officers observed an individual who matched the clerk's description operating a gray Nissan SUV. They then confirmed with the clerk that the individual was the same person observed with a firearm. As the suspect was exiting the vehicle, the officers made contact with him and recognized an odor of marijuana emitting from the vehicle. Subsequently, the officers requested that the Defendant present his driver's license or identification card, but he stated he did not have either on him. As a result, the officers detained him pending a positive identification. Specifically, the officers ran the suspect's information (after he voluntarily disclosed his name), confirmed his identity, and learned that Defendant had eleven (11) open and active traffic warrants with the City of Houston. With that knowledge, the officers placed Defendant under arrest. They also decided to have the vehicle towed and impounded because the store clerk had expressed that he wanted the vehicle removed from the store's parking lot, and no one else was present to remove it. Finally, as required by the policies and procedures of the Houston Police Department, the officers conducted an inventory search of the vehicle, which led to the discovery of the firearm.

Examining the totality of circumstances, the Court finds that reasonable suspicion existed justifying the officers' detention of Defendant to investigate further. Therefore, the initial temporary detention of Defendant was lawful, as was the subsequent investigation to confirm

Defendant's identity by running his information. Once the officers learned that Defendant had eleven (11) open and active traffic warrants with the City of Houston, they had probable cause under the Fourth Amendment to arrest Defendant and did so. After Defendant's arrest, the decision to impound the gray Nissan SUV was reasonable because the store clerk had expressed that he wanted the vehicle removed from the store's parking lot, and no one else was present to remove it. Additionally, after the officers had decided to impound the vehicle, the policies and procedures of the Houston Police Department dictated an inventory search of the vehicle, which led to the discovery of the firearm.[2] Therefore, the inventory search was reasonable. Accordingly, because the actions of the officers that led to the discovery of the firearm were lawful under the Fourth Amendment, the Court denies the Motion as to the firearm seized on February 4, 2018.

For the foregoing reasons, the Motion is hereby granted in part and denied in part. As to the statements made by Defendant without *Miranda* warnings while in police custody on February 4, 2018, the Motion is hereby GRANTED. As to the firearm seized on February 4, 2018, the Motion is hereby DENIED. As to the statements made by Defendant after a *Miranda* waiver on July 11, 2018, the Motion is hereby DENIED.

It is so ORDERED.

FEB 2 8 2019

Date

The Honorable Alfred H. Bennett
United States District Judge

[2] The Court has no reason to believe—nor does Defendant argue—that the policies and procedures of the Houston Police Department violate the *McKinnon* test detailed above. *McKinnon*, 681 F.3d at 209.